



City of Durham

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Jordan Parente - City Administrator

Kait Garlick - Administrative Assistant

STAFF REPORT: SEPTEMBER 18th, 2024

APPLICATION FILE: #753-24

REQUEST: Approval to remove one 13” diameter breast height (DBH) sweet cherry tree from the applicant’s back yard.

OWNER/APPLICANT: Dick and Linda Kirschbaum
8169 SW Kingfisher Way
Durham, OR 97224

SITE LOCATION: 8169 SW Kingfisher Way

AUTHORIZATION: The review and approval criteria for the proposal are provided in the Durham Development Code (DDC) under Chapter 5 Tree Protection; Chapter 9 Procedures, Section 9.6 Type 2 Process & Criteria; Tree Protection Ordinance 228-05 as amended by Ordinance 246-08; and the Durham Comprehensive Land Use Plan as revised 6.23.95.

SUMMARY OF EVENTS

On July 26th, 2024, a tree removal permit application was received from Dick and Linda Kirschbaum for 8169 SW Kingfisher Way. The request is to remove one sweet cherry tree 13” DBH located in their back yard as a Type E permit and has been assigned tree removal permit #753-24. The tree appears healthy, and no arborist report has been provided. The request comes to remove the tree to benefit a neighboring cedar tree and allow for more light for ground-level plantings. The applicants’ lot is heavily treed, and they request not to have to mitigate.

On September 16th, 2024, the City Administrator posted a public notice of land use action at City Hall and on the City’s website. The same day, notices were delivered to all properties within at least 300’ of the applicant’s property. Per the applicants’ request, the tree removal is scheduled to be heard at the regular meeting of the City of Durham Planning Commission on October 1st, 2024.

FACTS, ANALYSIS & FINDINGS

1. DDC Chapter 5 Tree Protection, Section 5.4.1

Type “E” Permit. Trees measuring 10” DBH or greater and are not eligible for any other permit type, including Type “D,” shall be subject to permitting with Planning Commission approval under a Type 2 process.

For an approved Type “E” Permit mitigation shall be provided as set forth in Section 5.5. Under certain circumstances, the Planning Commission may require mitigation exceeding that required in Section 5.5, but not less.

FINDINGS

- The applicants’ sweet cherry proposed to be removed under Type E tree removal permits #753-24 is 13” DBH.
- There are no other issues reported for the condition of the applicants’ tree, but they would like to remove it to gain more light for other trees.
- No arborist report has been received regarding this tree removal application.

2. DDC Chapter 9 Procedures, Section 9.6 Type 2 Process & Criteria

Type 2 is a process for review and decision by the Planning Commission with prior notice to affected persons but without a public hearing.

Section 9.6.1: A Type 2 process applies to non-emergency tree removal.

FACTS & ANALYSIS

- The tree removal application is on the agenda for the October 1st, 2024, meeting of the Planning Commission.
- The City has published, posted, and delivered the Public Notice to affected persons as of September 16th, 2024.

FINDINGS

- The City finds that Type E application appeals are a Type 2 process.

3. Tree Protection Ordinance 228-05, Section 4 Criteria for Issuance of Tree Cutting Permits

The burden is on the applicant to show that granting a permit will be consistent with the stated purpose of this ordinance. The ordinance provides seven criteria for consideration.

- a) The condition of the trees with respect to danger of falling, proximity to existing or proposed structures, interference with utility services or traffic safety, and hazards to life or property.
- b) The necessity to remove trees to construct proposed improvements or to otherwise utilize the applicant’s property in an economically beneficial manner.
- c) The topography of the land and the effect of tree removal on erosion, soil retention, stability of earth, flow of surface water, protection of nearby trees, windbreaks and a desirable balance between shade and open space.
- d) The number of trees existing in the neighborhood, the character and property uses in the neighborhood, and the effect of tree removal on neighborhood characteristics, beauty and property values.
- e) The adequacy of the applicant’s proposals to plant new trees as a substitute for the trees to be Cut in accord with Section 7 and Section 8 of this ordinance.
- f) The tree is diseased.
- g) The tree is dead.

FACTS AND ANALYSIS

Criteria A: The applicants state:

- 1) The tree is not a hazard.

Criteria B: The applicants state:

- 2) Tree removal is not related to any improvements.

Criteria C: The applicants state:

3) i) Tree removal has no impact on erosion, soil retention, stability of earth, surface water flow or protection of nearby trees.

ii) Tree removal will improve the balance of light and shade in an area that is currently heavily shaded.

iii) The tree is not adjacent to an upland wood corridor or streamside vegetated corridor.

STAFF COMMENT: This property is located approximately 300' from Fanno Creek and the Tualatin River. However, there is a large parcel of City Park that serves as a buffer, and it is unlikely that this tree will have significant impact.

Criteria D: The applicants state:

Tree removal would have a minimal impact relative to the number of trees on the property. The developed upper slope of the ¼ acre lot contains mature trees and many native shrubs. The lower undeveloped portion of lot is home to half dozen 150' Douglas-firs and associated understory.

a) The tree has no distinctive character other than being on the Invasive Species list.

b) Removal of the tree would be an imperceptible change to the skyline from 300 feet.

c) The tree does not serve as a visual screen between a residential and non-residential zone.

d) The tree is not greater than 50% of the stand of trees.

STAFF COMMENT: The City of Durham's tree ordinance and code does not treat invasive tree species differently from non-invasive tree species.

Criteria E: The applicants state:

No mitigation is proposed.

a) The tree is an invasive species.

b) The current property is already a heavily wooded area.

STAFF COMMENT: A Type E permit does require mitigation. The City Administrator agrees that the property is heavily wooded.

Criteria F: That applicants state:

The tree is not diseased.

Criteria G: That applicants state:

The tree is not dead.

FINDINGS

Based upon the category of a Type E removal permit the City finds that the following criteria are applicable: _____.

The Planning Commission finds that the following applicable criteria have been met: _____.

POTENTIAL MOTIONS

1) I move that tree removal 753-24 be denied.

OR

2) I move that tree removal 753-24 be approved with the condition(s) that _____ (please at least add the following conditions if you vote to approve and require mitigation):

A. _____ tree(s) will be planted as mitigation. This tree will be _____, (or from the list of approved mitigation trees) and be of a size that complies with the requirements set forth in Chapter 5, Section 5.5.1, i.e. 2” in diameter when measured from the top of the root ball for deciduous trees or 6’ tall when measured from the top of the root ball, excluding the leader, for evergreens.

B. Mitigation tree(s) must be planted within six months of the date of approval, or a request submitted for an additional 60-day extension. Property owner(s) must inform City Hall when the tree has been planted.

C. Any mitigation planting that fails within two years of the date of planting requires that property owner(s) notify City Hall and that the failing tree be replaced.

D. Within 60 days of the second anniversary of planting property owner(s) must request a final inspection of the mitigation planting. The permit will not be finalized until all the conditions are complied with and the final inspection requested.